

Appl. No. 10/609,311
Response to 8/28/2006 Office Action

Remarks

Claims 18, 34, and 57 have been cancelled; claims 1, 22, and 71 have been amended leaving claims 1-17, 19-20, 22-33, 35-56, 71, and 72 pending in the application. The amendment to the claim 71 is merely to correct a typographical error.

Previously pending claims 1-20, 71 and 72 stand rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner has taken issue with the "received laterally" language of the claims.

"The primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent." MPEP § 2173. Claims 1-17, 19-20, 71, and 72 are sufficiently definite for at least the reason that the scope of the claims is clear.

Claim 1 recites, in pertinent part, the first resist layer of the mask pattern having opposing sidewalls in at least one cross section, with the first resist layer extending continuously between the opposing sidewalls of the first resist layer of the mask pattern. In accordance with an example of this configuration, at page 12, Figs. 6 and 7 of the originally filed specification, opposing sidewalls 30 and 32 of resist layer 18 are described.

Claim 1 then recites, the second resist layer of the mask pattern having opposing sidewalls in the one cross section, with the second resist layer extending continuously between the opposing sidewalls of the second resist layer of the mask pattern. In accordance with an example of this

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configuration, at page 12, Figs. 6 and 7 of the originally filed specification, opposing sidewalls 34 and 36 of resist layer 20 are described.

Claim 1 then recites that an entirety of the opposing sidewalls of the first resist layer (sidewalls 30 and 32 of resist layer 18) received laterally inward of an entirety of the opposing sidewalls of the second resist layer (34 and 36 of resist layer 20) in the one cross section.

Even without reliance on the above mentioned portions of the originally filed specification, claim 1 is sufficiently clear, but in light of said examples, it would be unreasonable to consider claim 1 indefinite.

Further, where claim 1 recites that "an entirety of the opposing sidewalls of the first resist layer received laterally inward of an entirety of the opposing sidewalls of the second resist layer in the one cross section", no limitation is made, and none should be read into the claim indicating the angle or shape of the sidewalls. As such, opposing sidewalls of the first resist layer that may be concave-shaped can be received laterally inward of an entirety of the opposing sidewalls of a second resist layer.

Claims 1-20, 22-57, 71 and 72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moreau (U.S. Patent No. 3,934,057) or Lee (U.S. Published Application 2003/0211729). The pending claims have been amended and as amended are allowable in view of these references.

The Examiner should appreciate the need to reevaluate the combination of cited references in light of the amendments herein to the claims. Simply looking in such references or others for the changed or added limitations is not sufficient. Such

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reevaluation is required because the prior art must suggest to those of ordinary skill in the art, "that they should make the claimed composition or device, or carry out the claimed process." In re Vaeck, 947 F.2d 488, 20 USPQ 2d 1438, 1442 (Fed. Cir. 1991) (emphasis added). Further, the text of 35 U.S.C. §103(a) requires that "the subject matter as a whole" must be obvious rather than select elements. Applicant asserts that, with the claim amendment, the subject matter of the claims is transformed such that if a suggestion or motivation to combine the cited references previously existed, then it does not now. The mere fact that the prior art can be modified does not make the modification obvious "unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). "When prima facie obviousness is established and evidence is submitted in rebuttal, the decision-maker must start over". An earlier decision should not "be considered as set in concrete, and applicant's rebuttal evidence then be evaluated only on its knockdown ability." In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (C.C.P.A. 1976) (emphasis added).

For example, independent claims 1, 22, and 37 have been amended to include the limitation, after the developing, etching material of the silicon-comprising substrate using the mask pattern as a mask. The cited references do not sufficiently teach or suggest this limitation in combination with the recitations of these independent claims. Most particularly, and for example, claim 1 recites that an entirety of the opposing sidewalls of the first resist layer are received laterally inward of an entirety of the opposing sidewalls of the second resist layer in the one cross section. The cited references do not teach or suggest methods or processes

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that include the recited mask patterning steps and the etching of material using the patterned mask. Both the cited references describe mask patterning steps, however both only enable the deposition of material using the patterned mask, not the removal of material residing below the patterned mask as recited.

For at least these reasons, independent claims 1, 22, and 37 and the claims depending therefrom are allowable. Further, the dependent claims are allowable for additional reasons. For example: claim 3 recites wavelength limitations that are neither taught nor suggested by the cited references; claims 5, 6, and 10 recite resist compositions that are neither taught nor suggested by the cited references; and claim 11 recites developer compositions that are neither taught nor suggested by the cited references.

Claims 1-17, 19-20, 22-33, 35-56, 71, and 72 are in condition for allowance. Applicant requests allowance of claims 1-17, 19-20, 22-33, 35-56, 71, and 72 in the Examiners next action. The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at (509) 624 4276 on Monday-Friday between 8-5 (PST).

Respectfully submitted,

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By: 

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